THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 15229 of 2005

DATED:02.08.2005

Between:

B. Babu Rao, S/o. Jagannaikulu, Hindu,
Beside of DRM Office, East Coast Railway, Waltare

Division, Visakhapatnam

..... PETITIONER

AND

1 The Sr. Divisional Security Commissioner, Railway Protection Force,
East Coast Railway, Waltare Division, Visakhapatnam and others.

.....RESPONDENTS

HONOURABLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO:15229 of 2005

ORDER:

This writ petition is filed by the petitioner aggrieved by the order of transfer dated 08-07-2005 transferring the petitioner from Visakhapatnam to

Jagadhalpur, Chattishgadh State.

2. The grievance of the petitioner is that the transfer which was effected under the impugned order is in violation of Standing Order No.70 dated 27-09-2004 of the Director General of Railway Protection Force, apart from contravening other guidelines, as the transfer was effected after starting of the school session.

3. It is stated that the petitioner was appointed as a Railway Protection Force Constable on 04-08-1986 and joined at Visakhapatnam. Thereafter, he was transferred from Visakhapatnam to Kirandul, Madhya Pradesh in the year 1992 i.e., on 01-07-1992 and was again transferred from Kirandul to Visakhapatnam in the year 1996 i.e., on 13-07-1996. According to the petitioner, he is entitled to continue at Visakhapatnam for a period of two continuous tenures in terms of the Standing Orders and as the present transfer was effected before completion of the second term/tenure and as the impugned order of transfer does not show any reasons, the same is illegal and unsustainable and is liable to be set aside.

4. The learned counsel for the petitioner contended that two of the petitioner's children are studying in a school at Visakhapatnam and if the transfer is given effect to, the petitioner would suffer dislocation of his family in view of the education of his children at Visakhapatnam. The learned counsel also contended that the petitioner had already made a representation dated 10-07-2005 to the first respondent seeking permission to continue in the quarter allotted to the petitioner so as to allow the petitioner's children to continue their education at Visakhapatnam till the academic year is completed. The learned counsel for the petitioner also referred to the relevant provisions of the Standing Order contending that the tenure means a period of posting of five years and premature transfer is also explained in the Standing Orders which means a transfer before completion of one's tenure prescribed by DG/RPF in the Standing Order. According to the learned counsel, though the petitioner had completed one-tenure, he was retained in the second tenure. Now the present transfer is before completion of the second tenure, therefore, it should be treated as a premature transfer and as such transfer is not in accordance with

the Standing Orders which were amended by proceedings dated 09-05-2005 which requires reasons to be recorded for such transfer and as no such reasons are recorded, the transfer is liable to be quashed.

5. A counter is filed on behalf of the respondents by the Assistant Security Commissioner, Railway Protection Force, disputing and denying the allegations made by the petitioner. It is stated that the petitioner has completed one-full tenure of five years and apart from that, he had continued for nearly four years over and above the regular tenure of five years. Further, there are certain allegations against the petitioner. Therefore, the petitioner was transferred from Visakhapatnam to Jagadhalpur under the impugned order dated 08-07-2005. It is further stated that the petitioner was also relieved from duties at Visakhapatnam on 11-07-2005. Therefore, there is no merit warranting interference in the impugned order. The learned Standing Counsel also stated that if the petitioner's children are studying, he can make appropriate application and as per the Board's Standing Orders, an employee is entitled for retention of the quarter till the completion of the academic year and the application if any made by the petitioner would be considered in the light of the Standing Orders. Therefore, sought to dismiss the writ petition.

6. Heard the learned counsel for the petitioner and the learned Standing Counsel.

7. This writ petition is filed by the petitioner assailing the validity of the transfer order dated 08-07-2005 under which the petitioner was transferred from Visakhapatnam to Jagadhalpur, Chattishgadh. The grievance of the petitioner is that though the petitioner had completed one full tenure, he is entitled to continue the second tenure also in terms of para 4 of the Standing Orders which refers to Metropolitan Cities like Delhi, Mumbai, Chennai, Kolkata, Hyderabad/Secunderabad, Banglore etc., where the officers and the staff of the Railway Protection Force can be continued for two successive tenures. In the light of the said Standing Order, the petitioner is entitled even for the second tenure of five years. As the present transfer is before completion of second

tenure of five years, the impugned transfer is premature. Therefore, the transfer without recording reasons is illegal and unsustainable. As per para 4 of the Standing Order, Visakhapatnam is not a Metropolitan City though etcetera was used in the Standing Order. In any case, as the petitioner had completed one-tenure, retention of second tenure is not mandatory and it is only optional to the respondent-authorities, even assuming that Visakhapatnam would also be treated on par with other Metropolitan Cities. Further, as the petitioner had already completed nine years of his service at Visakhapatnam, the transfer effected under the impugned order cannot be found fault. Further, as the petitioner had already been relieved on 11-05-2005, there are no grounds warranting interference.

8 . However, as the petitioner has already made a representation seeking allowance of the petitioner to retain the quarter allotted to him, while he was serving at Visakhapatnam, the respondents are directed to consider the same sympathetically in accordance with the Standing Orders to continue the petitioner's family so as to complete the education of his children for the academic year, and pass appropriate orders, expeditiously.

9. The writ petition is accordingly disposed of. No order as to costs.

S.ANANDA REDDY, J

02nd August, 2005

SKM